

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LAURA D. JANTOS,

Plaintiff,

v.

THE PRUDENTIAL LIFE INSURANCE
COMPANY OF AMERICA,

Defendant.

Case No. 2:15-cv-01530-RAJ

ORDER

This matter comes before the Court on Plaintiff Laura D. Jantos' ("Plaintiff" or "Ms. Jantos") Motion for Summary Judgment and Defendant Prudential Life Insurance Company of America's ("Prudential" or "Defendant") Cross-Motion for Summary Judgment. Dkt. ## 62, 63, 67, 68. Both parties have opposed the other's Motion and filed a Reply in support of their own. Dkt. ## 72, 73, 74, 78, 79, 80.

For the reasons that follow, the Court **GRANTS IN PART AND DENIES IN PART** Plaintiff's Motion for Summary Judgment, **DENIES** Defendant's Cross-Motion

1 for Summary Judgment, and **REMANDS** this case to Defendant with instructions to
2 reprocess Plaintiff's claim in accordance with this Order.

3
4 **I. BACKGROUND**

5 Plaintiff worked at ECG Management Consultants, Inc. ("ECG") from 1995 to
6 2005, when she became a shareholder. AR79-80; AR345-60.¹ Plaintiff is a beneficiary
7 to a Long Term Disability ("LTD") Plan that Defendant administers. AR1041. In April
8 2012, Plaintiff suffered a traumatizing brain injury in a snowboarding accident and
9 became disabled. AR83-86. Plaintiff then submitted a claim for LTD benefits under
10 the Plan. *Id.*

11 Plaintiff's Plan provided that it would pay sixty-percent of Plaintiff's "monthly
12 earnings," up to \$15,000. AR27; AR37-38. "Monthly earnings" was defined in the
13 Plan as the participant's "gross monthly income from your Employer in effect just prior
14 to your date of disability. It does not include income received from commissions,
15 bonuses, overtime pay, any other extra compensation, or income received from sources
16 other than your Employer." AR37-38. The Plan further informs participants that
17 Defendant would "multiply your monthly earnings by 60%" and then compare that
18 figure with the maximum benefit (\$15,000). *Id.* The lesser of those two numbers is the
19 gross disability payment, which may be reduced by certain other income the participant
20 receives, including social security. *Id.*

21 During its initial review of Plaintiff's disability claim in October 2012, Defendant
22 informed ECG that it was "completing our initial review of Ms. Jantos' claim . . . and
23 needed to confirm her monthly earning[s]" and stated:

24 Monthly earnings means her gross monthly income from the employer in
25 effect just prior to her date of disability (April 3, 2012). It does not include
26 income received from commissions, bonuses, overtime pay, any other
extra compensation, or income received from sources other than her
Employer. Copy of pay stubs for the month of March 2012 should suffice

27 ¹ Pages from the Administrative Record are cited as, e.g., "AR1," where the number in the citation refers to the
final six-digit number of the page's Bates number with preceding zeroes excluded. *See* Dkt. # 82.

1 the request. Can you also send in her timesheet beyond September 15,
2 2012 through present.

3 AR212-17. In response, ECG provided Plaintiff's February 29, 2012 and March 15,
4 2012 pay stubs. *Id.*

5 On October 11, 2012, Defendant approved Plaintiff's LTD claim. AR 964-66.
6 Defendant then calculated Plaintiff's base salary at \$190,000 per year, and took this
7 amount, divided by 12, to be her "monthly earnings" for the purposes of assessing her
8 LTD benefits under the plan. AR79; AR213-14. In the October 2012 approval letter,
9 Defendant stated that Plaintiff's "*monthly earnings*" were \$15,833.33 and that her
10 "Scheduled Benefit (60.00% of salary)" was therefore \$9,500. AR965.

11 On July 28, 2015, Defendant terminated Plaintiff's LTD benefits effective July
12 31, 2015 because it concluded she no longer met the Plan's definition of disability.
13 AR1113-14. Plaintiff then filed this lawsuit on September 25, 2015 arguing (1) that
14 Defendant had underpaid her monthly benefit; and (2) that Defendant had improperly
15 stopped paying LTD benefits. Dkt. # 1, at ¶¶ 6-7. The Court stayed the case pending
16 resolution of the ERISA claim process. Dkt. ## 13, 17.

17 In December 2015, Plaintiff appealed Defendant's termination of her LTD
18 benefits. AR2419-24. Defendant reinstated her claim on March 10, 2016 effective
19 August 1, 2015, and paid out based on the same monthly benefit amount it had
20 previously paid. AR2448-49. The parties notified the Court, and the Court reopened
21 this case on May 24, 2016. Dkt. # 18. Defendant then moved to dismiss Plaintiff's
22 Complaint, arguing that (1) Plaintiff failed to exhaust her administrative remedies; and
23 (2) Plaintiff did not provide sufficient detail in her Complaint regarding her
24 "miscalculation" claim. Dkt. # 38. The Court granted Defendant's motion and
25 dismissed Plaintiff's Complaint without prejudice. Dkt. # 44. Plaintiff then appealed
26 Defendant's determination of her monthly benefit amount, alleging that Defendant
27 undercalculated her "monthly earnings" under the plan. AR2419-424. As part of this

1 appeal, Plaintiff submitted her W-2's from ECG for 2010-2012, which reflected total
2 annual earnings of \$690,462.51 in 2010, \$716,595.18 in 2011, and \$598,015.84 in 2012.
3 AR2422-24.

4 Defendant denied the appeal by letter dated June 21, 2017, reasoning that it could
5 not tell from the W-2's whether the income figure included excludable items, such as
6 bonuses. AR 2453-57; Dkt. # 56. In deciding this appeal, Defendant contacted ECG on
7 June 1, 2017. AR2491. Defendant contends that they informed ECG of the appeal and
8 asked that ECG confirm the information in ECG's June 22, 2012 "Employer Statement"
9 form provided by Defendant, which indicated that Plaintiff's "Normal Earnings Prior to
10 this Absence (exclude bonus, overtime, etc.)" were \$190,000.00 per year. AR 79;
11 AR2491. According to Defendant's records, ECG's Chief Human Resources Officer
12 responded on June 5, 2017, stating that "[b]elow is our final record of Ms. Jantos'[]
13 annual base salary, which was \$190,000. This figure excludes annual incentive pay,
14 bonus, commission, profit sharing, etc." AR2492.

15 After receiving Defendant's decision, Plaintiff filed her Second Amended
16 Complaint. Dkt. # 51. On July 20, 2018, Plaintiff filed her Motion for Summary
17 Judgment. Dkt. ## 62, 63. Defendant responded with its Cross-Motion for Summary
18 Judgment. Dkt. ## 67, 68. These Motions are now before the Court.

19 **II. LEGAL STANDARD**

20 The first issue the Court must decide is whether to consider the parties' Motions
21 under Federal Rule of Civil Procedure 52 or 56. Plaintiff filed her Motion as one
22 arising under Rule 56; Defendant filed its Motion as one arising Rule 56 or "in the
23 alternative" Rule 52. Dkt. ## 63, 68. Both parties appear to treat their respective
24 motions as arising under Rule 56; neither provides any proposed factual findings or
25 cites any standard from Rule 52 that would guide this Court's analysis. The only legal
26 standard Defendant cites is the standard for summary judgment under Rule 56. Dkt. #
27 68 at 9-10.

1 Accordingly, as neither party appears to oppose treating this dispute as arising
2 under Rule 56, the Court will construe both Motions as motions for summary judgment.
3 Summary judgment is appropriate if there is no genuine dispute as to any material fact
4 and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).
5 The moving party bears the initial burden of demonstrating the absence of a genuine
6 issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the
7 moving party will have the burden of proof at trial, it must affirmatively demonstrate
8 that no reasonable trier of fact could find other than for the moving party. *Calderone v.*
9 *United States*, 799 F.2d 254, 259 (6th Cir. 1986). On an issue where the nonmoving
10 party will bear the burden of proof at trial, the moving party can prevail merely by
11 pointing out to the district court that there is an absence of evidence to support the non-
12 moving party's case. *Celotex Corp.*, 477 U.S. at 325. If the moving party meets the
13 initial burden, the opposing party must set forth specific facts showing that there is a
14 genuine issue of fact for trial in order to defeat the motion. *Anderson v. Liberty Lobby,*
15 *Inc.*, 477 U.S. 242, 250 (1986). The court must view the evidence in the light most
16 favorable to the nonmoving party and draw all reasonable inferences in that party's
17 favor. *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150-51 (2000).

18 In this ERISA action, both parties agree the applicable standard of review is *de*
19 *novo*. Dkt. # 63 at 14-15; Dkt. # 68 at 10. The Court accepts the parties' apparent
20 agreement and reviews the record *de novo*. "When conducting a *de novo* review of the
21 record, the court does not give deference to the claim administrator's decision, but rather
22 determines in the first instance if the claimant has adequately established that he or she is
23 disabled under the terms of the plan." *Muniz v. Amec Constr. Mgmt., Inc.*, 623 F.3d 1290,
24 1295-96 (9th Cir. 2010). The administrator's "evaluation of the evidence is not accorded
25 any presumption of correctness." *Perryman v. Provident Life Ins. & Acc. Ins. Co.*, 690
26 F. Supp. 2d 917, 942 (D. Ariz. 2010). In reviewing the administrative record and other
27 admissible evidence, the Court "evaluates the persuasiveness of each party's case, which

1 necessarily entails making reasonable inferences where appropriate.” *Oldoerp v. Wells*
2 *Fargo & Co. Long Term Disability Plan*, 12 F.Supp.3d 1237, 1251 (N.D. Cal. 2014)
3 (quoting *Schramm v. CNA Fin. Corp. Insured Grp. Ben. Program*, 718 F. Supp. 2d 1151,
4 1162 (N.D. Cal. 2010)).

5 When a district court “reviews a plan administrator’s decision under the de novo
6 standard of review, the burden is placed on the claimant.” *Muniz*, 623 F.3d at 1294; *see*
7 *also Horton v. Reliance Standard Life Ins. Co.*, 141 F.3d 1038, 1040 (11th Cir. 1998)
8 (claimant “bears the burden of proving his entitlement to contractual benefits”).
9 However, this does not relieve the plan administrator from its duty to engage in a
10 “meaningful dialogue” with the claimant about her claim. *See Booton v. Lockheed Med.*
11 *Ben. Plan*, 110 F.3d 1461, 1463 (9th Cir. 1997) (“[W]hat 29 C.F.R. § 2650.503-1(g) calls
12 for is a meaningful dialogue between ERISA plan administrators and their beneficiaries .
13 . . . [I]f the plan administrators believe that more information is needed to make a reasoned
14 decision, they must ask for it.”).

15 **III. DISCUSSION**

16 Plaintiff’s primary claim arises under 29 U.S.C. § 1132(a)(1)(B). Dkt. # 51 at ¶¶
17 29-31. She alleges that Defendant underpaid her LTD benefits, and she seeks to enforce
18 her rights under the Plan as well as clarify her right to future benefits under the terms of
19 the Plan. *Id.* Section 1132(a)(1)(B) provides that a “civil action may be brought by a
20 participant or beneficiary to recover benefits due to him under the terms of his plan, to
21 enforce his rights under the terms of the plan, or to clarify his rights to future benefits
22 under the terms of the plan.” 29 U.S.C. § 1132(a)(1)(B). Plaintiff also alleges that
23 Defendant violated its obligations as an ERISA fiduciary “by failing to act in
24 accordance with the documents and instruments governing the LTD Plan” when
25 calculating Plaintiff’s monthly benefit, in violation of 29 U.S.C. § 1132(a)(3). *Id.* at ¶¶
26 32-39. Plaintiff alleges that Defendant breached its fiduciary duty by, *inter alia*,
27 “failing to fully and fairly investigate the correct amount of Plaintiff’s ‘monthly

1 earnings' in making its determination of the 'gross disability payment' and 'monthly
2 payment' due Plaintiff." *Id.* at ¶ 36. In her Motion for Summary Judgment, Plaintiff
3 requests that this Court order a recalculation of her "monthly earnings" to include
4 sources of income besides her base salary, to order Defendant to provide Plaintiff a
5 monthly payment of \$15,000 (subject to Social Security offset) since July 2012, and to
6 pay prejudgment interest. Dkt. # 63 at 26-27. Defendant's Cross-Motion requests that
7 this Court find that Defendant has paid Plaintiff precisely the benefit she is sue under
8 the Plan, and to therefore dismiss Plaintiff's claim with prejudice. Dkt. # 68 at 16.

9 Accordingly, the main issue in this case is whether Defendant properly
10 investigated and calculated Plaintiff's "monthly earnings" under the Plan for purposes
11 of paying out her LTD benefits. The Plan states that it will pay sixty-percent of
12 Plaintiff's "monthly earnings," not to exceed \$15,000. AR37-38. In this case, the
13 Administrative Record consists primarily of evidence of only one type of "monthly
14 earning": Plaintiff's salary. Defendant found that Plaintiff earned \$15,833.33 per
15 month, as this figure represents the monthly division of her \$190,000 annual salary.
16 AR965. Defendant agreed to pay Plaintiff sixty-percent of this amount, which equals
17 approximately \$9,500. *Id.* Thus, if Plaintiff's salary is truly the only type of income
18 that qualifies as "monthly earnings" under the Plan's definition, then Defendant's
19 calculations are correct and they would be entitled to summary judgment. Dkt. # 68.

20 It seems that from the outset of Plaintiff's claim, Defendant believed it only needed
21 to determine Plaintiff's annual salary in order to calculate her "monthly earnings" under
22 the Plan. *See, e.g.*, AR2419.² The Court does not believe the resolution of this case to
23 be so simple. The Plan does not contain any language explicitly limiting "monthly
24 earnings" to a participant's annual salary; instead, the Plan calculates "monthly earnings"
25 as the participant's "gross monthly income" excluding "income received from

26 ² It is perhaps for this reason that Defendant only requested pay stubs from ECG in 2012 and did not request any
27 other information about Plaintiff's compensation structure. AR216-17. The Court notes that Plaintiff's pay stubs
for two months may not, and in this case did not, reflect the total amount of Plaintiff's income.

1 commissions, bonuses, overtime pay, [or] any other extra compensation.” AR37-38.
2 None of these more specific terms are defined anywhere else in the Plan documents
3 provided to the Court. Under the doctrine of *contra proferentem*, the Court should
4 interpret any ambiguities in favor of the non-drafting party. *See Kunin v. Benefit Trust*
5 *Life Ins. Co.*, 910 F.2d 534, 538-40 (9th Cir. 1990). *Contra proferentem*, which is
6 recognized by federal common law and the law of every state, holds that “if, after
7 applying the normal principles of contractual construction, the insurance contract is fairly
8 susceptible of two different interpretations, another rule of construction will be applied:
9 the interpretation that is most favorable to the insured will be adopted.” *Id.* Accordingly,
10 to the extent ambiguities exist with respect to terms such as “gross monthly income” or
11 “bonus,” they are to be resolved in favor of Plaintiff, the non-drafting party.

12 Under this analytical framework, the Court finds that the evidence submitted by
13 Plaintiff in her Affidavit (Dkt. # 67) indicates the existence of potential sources of income
14 that should have been considered by Defendant in calculating Plaintiff’s “monthly
15 earnings.” In her Motion, Plaintiff argues that Defendant undercalculated her monthly
16 benefits by only including her base salary as “monthly earnings.” Dkt. # 62 at 4. Plaintiff
17 contends that her income from ECG consisted of (1) a base salary; (2) “ordinary business
18 income” as a shareholder of ECG, a subchapter S corporation,³ and (3) income through
19 [REDACTED]. *Id.* In support of her argument, Plaintiff
20 submits a number of documents that are not included in the Administrative Record,
21 including (1) Schedule K-1’s from 2010 to 2012 indicating “ordinary business income”
22 Plaintiff received as a shareholder of ECG; and (2) documentation evidencing [REDACTED]

23
24 ³ Plaintiff notes that as a subchapter S corporation, ECG was treated as a pass-through entity, with all items of
25 income generated by the company allocated personally to individual shareholders as reported annually by ECG on
26 Form K-1 (via Form 1120S). Dkt. # 63 at 6. A Schedule K-1 is the form “used by an S corporation to report the
27 shareholder’s share of income, losses, deductions and credits.” *Rubin v. United States*, 904 F.3d 1081, 1083 (9th
Cir. 2018). Plaintiff continues that as a subchapter S corporation, ECG did not have its own tax liability because
its income was divided among and passed through to its shareholders based on percentage of ownership. *Id.*
Defendant does not dispute this characterization.

1 [REDACTED]
2 [REDACTED]; and (3) [REDACTED]
3 [REDACTED].

4 Dkt. # 67, Exs. 1-8. Plaintiff contends that these
5 documents show additional income sources that would entitle her to the “maximum
6 monthly benefit” of \$15,000 per month. Dkt. # 63 at 21.

7 Defendant’s counterarguments here, and elsewhere in its Response, rely mostly on
8 dictionary definitions and analogies, glossing over the ambiguities and vagueness in the
9 Plan’s definition of “monthly earnings.” Dkt. # 73 at 6-14. Defendant argues, for
10 instance, that the Schedule K-1 income should be excluded as “bonus” or “extra
11 compensation” income because it was dependent on ECG’s profitability, and therefore
12 not guaranteed or ascertainable until after Plaintiff became disabled. Dkt. # 73 at 10. The
13 vague wording and definition of “monthly earnings” in the Plan do not support
14 Defendant’s limited construction. It is hard to see, based on the current record, how the
15 Schedule K-1 income qualifies as a “bonus,” especially where this term is not defined or
16 limited in the Plan itself. Even though Defendants argues that a dictionary definition of
17 “bonus” includes “something in addition to what is expected or strictly due,” Defendant
18 has not shown how this income is in “addition” of what would normally be given. Dkt.
19 # 73 at 8. Instead, Plaintiff established that she had received this income as part of her
20 normal compensation for years. Dkt. # 67, Exs. 1-3. The record also contains little
21 indication as to how the Schedule K-1 payments are in any way discretionary, or not
22 ascertainable. As Plaintiff notes, passthrough income on a Schedule K-1 reflects payouts
23 typical of all S corporations and accumulates throughout the year, and had done so for the
24 many years Plaintiff was a shareholder. Dkt. # 80 at 3. At best, the Court cannot
25 categorically reject all of Plaintiff’s Schedule K-1 income as a “bonus” or “extra
26 compensation,” as Defendant suggests. These terms are ambiguous as defined in the Plan,
27 and ambiguities are to be resolved in favor of Plaintiff. *Patterson v. Hughes Aircraft Co.*,
11 F.3d 948, 950 (9th Cir. 1993).

1 Defendant also admits that the Schedule K-1 and [REDACTED] qualify as “income,”
2 but contends that it was not included in the earnings calculation because it was not paid
3 out “monthly.” Dkt. # 73 at 7, n.14 (“Prudential recognizes that Plaintiff’s K-1 and
4 [REDACTED] payments constitute gross income to Plaintiff from ECG, as
5 those terms are defined per their plain and ordinary meaning. But, as addressed above,
6 this income was not paid monthly.”). The Court agrees with Plaintiffs that this appears
7 to be an overly reductive interpretation of “monthly” as used in the Plan. Under
8 Defendant’s literal interpretation, any income that is not paid strictly on a “monthly” basis
9 would be excluded. Dkt. # 73 at 7. As Plaintiff argues, this would have the effect of
10 potentially excluding Plaintiff’s salary, which is paid biweekly, leaving Plaintiff with
11 theoretically no “monthly earnings.” Dkt. # 80 at 2. The Court cannot construe the terms
12 of the Plan in such a fashion as to potentially deny Plaintiff any LTD benefits, especially
13 where her eligibility is no longer in dispute. Moreover, this construction is seemingly
14 contradicted by Defendant’s own actions in allocating Plaintiff’s monthly benefits by
15 dividing her annual salary by twelve. AR212-16; 964-66. Defendant’s interpretation also
16 would apparently ignore the word “gross,” which would seemingly provide for more than
17 one source of income beyond a participant’s salary. *Cf. Stephan v. Unum Life Ins. Co. of*
18 *Am.*, 697 F.3d 917, 936 (9th Cir. 2012) (rejecting insurer’s argument that “gross monthly
19 income” included only income actually received prior to disability).

20 As a result, applying the doctrine of *contra proferentem*, the Court would interpret
21 ambiguities in favor of the Plaintiff and conclude that Plaintiff’s “monthly earnings” are
22 not necessarily limited to her annual salary and could include, at least, the income
23 reflected in her Schedule K-1’s. The Court is in a more difficult position with Plaintiff’s
24 income through the [REDACTED] at ECG. It is not clear from the current record whether the
25 income Plaintiff received from the [REDACTED] should have been included in the monthly
26 earnings calculation. As mentioned above, “monthly earnings” under the Plan explicitly
27 excludes “bonuses.” AR37-38. [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] Dkt. # 67, Ex. 4; *cf.*
7 *Russell v. Prudential Ins. Co. of Am.*, 437 F.2d 602, 606 (5th Cir. 1971) (finding that
8 portions of income that are “in the nature of a commission or incentive pay [do] not have
9 that quality of unexpectedness implied by the word ‘bonus’” and are thus properly
10 included in benefits determination under ERISA plan). There simply is not enough
11 evidence in the Administrative Record supporting either construction, primarily because
12 the only evidence on this point was first submitted by Plaintiff is support of her Motion
13 for Summary Judgment, and Defendant has not yet investigated or analyzed this evidence.
14 Dkt. # 67. More development of the Administrative Record would be needed to
15 determine how payments under these PIP’s operated, and how these operations interact
16 with the Plan’s definitions.

17 This leaves the Court in a difficult position. On one hand, Plaintiff has submitted
18 seemingly compelling evidence that Defendant miscalculated her “monthly earnings” by
19 not including, at least, her shareholder income, and potentially her [REDACTED]. On the
20 other hand, the Court is wary of the Ninth Circuit’s warning about considering evidence
21 that is not contained in the Administrative Record, and evidence that “could easily have
22 been submitted to the administrator is disfavored.” *Nicula v. First UNUM Life Ins. Co.*,
23 23 F. App’x 805, 808 (9th Cir. 2001); *see also Kearney v. Standard Ins. Co.*, 175 F.3d
24 1084, 1091 (9th Cir. 1999). Defendant persuasively argues that this evidence of
25 additional income was likely in Plaintiff’s possession throughout the appeal process, and
26 should have been offered earlier for Defendant to consider and note in the Administrative
27 Record. Dkt. # 72 at 14-17. Plaintiff’s argument that she was prevented from doing so

1 because of “confidentiality” agreements with ECG is unconvincing and largely
2 unsupported by evidence in the record. Dkt. # 80 at 11.

3 However, the Court also notes that the Administrative Record is likely
4 incomplete due to Defendant’s lack of investigation into Plaintiff’s earning situation.
5 Although the insured carries the burden of showing she is entitled to benefits, ERISA
6 administrators have a fiduciary duty to conduct an adequate investigation when
7 considering a claim for benefits. *Cady v. Hartford Life & Accidental Ins. Co.*, 930 F.
8 Supp. 2d 1216, 1226 (D. Idaho 2013) (citing *Boonton v. Lockheed Med. Ben. Plan*, 110
9 F.3d 1461, 1463 (9th Cir. 1997)); *see also Rasenack v. AIG Life Ins. Co.*, 585 F.3d
10 1311, 1324 (10th Cir. 2009). “This requires that the plan administrator engage in
11 ‘meaningful dialogue’ with the beneficiary. If the administrator ‘believes more
12 information is needed to make a reasoned decision, they must ask for it.’” *Cady*, 930 F.
13 Supp. 2d at 1226 (quoting *Boonton*, 110 F.3d at 1463).

14 The Court agrees with Plaintiff that Defendant’s investigation into Plaintiff’s
15 compensation structure, as reflected in the Administrative Record, was likely
16 inadequate. While the Administrative Record does not contain the compensation
17 evidence Plaintiff now provides on summary judgment, it did contain indications that
18 Plaintiff’s “gross monthly income” was not limited to her yearly salary. For instance,
19 Plaintiff’s W-2’s, submitted during the administrative appeal process, indicated that her
20 income was much higher than \$190,000. AR2419-24. Defendant argues that it is
21 impossible to tell from these W-2’s alone whether these amounts included bonuses or
22 other compensation excludable from the “monthly earnings” calculation under the Plan.
23 Dkt. # 68 at 14; AR 2453-2457, AR2486. This observation, while true, should have
24 triggered additional inquiries into Plaintiff’s compensation structure, not the cessation
25 of Defendant’s investigation. A plan administrator may not “shut [its] eyes to readily
26 available information when the evidence in the record suggests that the information
27

1 might confirm the beneficiary's theory of entitlement.” *Rodgers v. Metropolitan Life*
2 *Ins. Co.*, 655 F. Supp. 2d 1081, 1087 (N.D. Cal. 2009) (citations omitted).

3 Moreover, both ECG and Plaintiff repeatedly informed Defendant that Plaintiff
4 was a shareholder of ECG, which should have indicated to Defendant that Plaintiff may
5 have income sources beyond those of a typical employee. AR79-80; AR358; AR1041.
6 It is true that from 2012 to 2017, the only income reported by ECG was Plaintiff’s
7 \$190,000 salary, and Plaintiff did not seem to contest the monthly benefits amount;
8 accordingly, during that time period, it may have been reasonable for Defendant to
9 believe there was only one income source. This situation changed when Plaintiff
10 submitted her W-2 evidence in 2017. The W-2’s, combined with other evidence in the
11 record that indicated additional income, should have triggered a more thorough inquiry
12 as to the sources of income that generated the W-2 numbers.⁴ Instead, Defendant used
13 the ambiguity as an excuse to avoid further investigation. Had Defendant conducted a
14 more thorough investigation of Plaintiff’s compensation structure, the relevant evidence
15 (such as the Schedule K-1’s and the PIP documentation) would likely be in the
16 Administrative Record, and the Court would not be faced with the current dilemma.

17 Instead of making a determination on an incomplete record, the Court believes it
18 to be more prudent to remand this matter to the plan administrator for a new factual
19 determination of Plaintiff’s “monthly earnings” based on the evidence now before the
20 Court on summary judgment. Even on *de novo* review, this Court can remand a
21 disability claim to the plan administrator if the record is not sufficiently developed. *See*
22 *Mongeluzo v. Baxter Travenol Long Term Disability Ben. Plan*, 46 F.3d 938, 944 (9th
23 Cir. 1995) (finding that “additional evidence is necessary to conduct an adequate de

24 ⁴ Although Defendant contends that ECG definitively confirmed Plaintiff’s income was limited to her salary, the
25 Administrative Record is not so clear. Dkt. # 73 at 8. Initially, Defendant’s communications with ECG indicated
26 that ECG only needed to provide one set of pay stubs, and the “Employer Statement” form did not solicit any
27 additional information about Plaintiff’s compensation structure. AR2421. In responding to Defendant’s requests,
ECG indicated that it believed that it only needed to provide information concerning Plaintiff’s salary. AR2486;
AR2491-92. Given the considerably more complicated circumstances of Plaintiff’s actual compensation structure,
these efforts do not bear the indications of an adequate investigative effort of Plaintiff’s potential LTD benefits.

1
2 novo review of the benefit decision” and “leav[ing] to the district court whether to
3 remand to the plan administrator for an initial factual determination”); *Kowalski v.*
4 *Farella Braun & Martell, LLP*, No. C-06-3341 MMC, 2008 WL 5397511, at *15 (N.D.
5 Cal. Dec. 23, 2008) (finding, on de novo review, that there was “inadequate medical and
6 vocational evidence in the record to support a finding on such an issue” and remanding
7 the claim to the administrator for consideration.”).

8 The Court finds that Defendant has not yet fully examined the compensation
9 structure evidence it should have examined, and thus has not yet made the appropriate
10 findings for this Court to review. The Court will **DENY** Defendant’s Cross-Motion and
11 **GRANT IN PART AND DENY IN PART** Plaintiff’s Motion. The Court grants
12 Plaintiff’s Motion only to the extent it requests a reexamination and recalculation of her
13 monthly benefits in accordance with this Order, but otherwise denies Plaintiff’s Motion.
14 The Court thus exercises its discretion to **REMAND** this matter to the Plan
15 Administrator, Defendant, to reinvestigate and recalculate Plaintiff’s “monthly
16 earnings.” In doing so, Defendant should reexamine and recalculate Plaintiff’s LTD
17 benefits considering the information attached to Plaintiff’s Affidavit submitted in
18 support of her Motion (Dkt. # 67), and conduct an appropriate investigation based on
19 this evidence. Should Plaintiff conclude that Defendant’s resulting findings are faulty,
20 or a reasonable investigation was again not conducted, Plaintiff may appeal Defendant’s
21 determination.

22 23 **IV. CONCLUSION**

24 For all the foregoing reasons, the Court **GRANTS IN PART AND DENIES IN**
25 **PART** Plaintiff’s Motion for Summary Judgment, and **DENIES** Defendant’s Cross-
26 Motion for Summary Judgment. Dkt. ## 63, 68. The Court **REMANDS** this matter to
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1 Defendant to reexamine the calculation of Plaintiff's LTD benefits in accordance with
2 this Order.

3 Dated this 21st day of March, 2019.
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7 The Honorable Richard A. Jones
8 United States District Judge
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